IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 2547 of 2005

Between:

Ubba Satyam S/o late Kannaiah
R/o Gangavaram Village, Bhadrachalam, Khammam district

..... PETITIONER

AND

1 The Superintendent Prohibition & Excise
Khamman, Khamman District.
2 The Principal Secretary, Prohibition & Excise Department
Government of Andhra Pradesh, Secretariat, Hyderabad.
3 The Commissioner of Prohibiotion & Excise Government of Andhra Pradesh , Hyderabad.
4 The District Collector, Khammam ,
Khammam district.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the 1st respondent in passing Gazette Publication in No.08/2005, Khamman dt. 11/02/2005, notifying that the grant of IL-24 License for the lease year 2005-2006 calling for tenders for allotment of liquor shops in Khamman District in respect of areas in Sl.No.6,7,51,52,53,54,55,56,57,58,and 61,62,63, of the Notification in Schedule Area is illegal and void and opposed to Articles 14,19,and21 and the Schedule -V of constitution of India and Regulations thereunder in favour of the Tribals in schedule area in view consequently direct the respondents to allot the liquor shops in question in favour of the schedule tribes in schedule area.

Counsel for the Petitioner: MR.MUMMANENI.SRINIVASA RAO

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court at the admission stage made the following :

ORDER:

The petitioner challenges the action of the respondents in publishing a notification, dated 11.02.2005, for the purpose of granting leases to run IL 24 (Retail shops). The petitioner claims to be a Scheduled Tribe. According to him, the grant of leasehold rights even for establishment of IL 24 licences in scheduled areas is impermissible and is contrary to Schedule-V of the Constitution of India and the regulations made thereunder. The petitioner relies upon a judgment of the Supreme Court in ***Samatha v. State of A.P.***

Heard learned counsel for the petitioner and learned Government Pleader for Prohibition and Excise.

Schedule-V to the Constitution of India incorporates various provisions to protect the rights of the tribals. One of the measures is to ensure that the rights in the immovable properties in the scheduled areas are not permitted to be transferred in favour of non-tribals. For this purpose, several regulations have been framed by the President of India to protect the rights of the Scheduled Tribes. In ***Samatha's*** case, the Supreme Court held that Para 5(2)(b) of the Schedule-I to the Constitution of India imposes a total prohibition on transfer of immovable property in the scheduled area in favour of a non-tribal. There is absolutely no difficulty in implementing the said provisions. The question is as to whether the grant of IL-24 licences under the A.P.Excise (Lease of Right to Sell Indian Liquor and Foreign Liquor and Beer in Retail under IL 24 licence) Rules, 1998 contravenes the said provisions.

By its very nature, the transfers that are prohibited under the relevant provisions of the Constitution of India and regulations made thereunder are in relation to immovable properties. By granting an IL 24 licence, the respondents do not propose to grant any lease or effect any other kind of transfer in relation to any immovable property. The licencee gets a privilege or a right to sell the liquor on payment of licence fee. He does not acquire any rights or interests in the immovable property in the scheduled area.

This Court is not inclined to grant the relief as prayed for. Hence, the writ petition is

dismissed. There shall be no order as to costs.

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16.02.2005

Note: Issue C.C. in two days.

(B/o)

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To

1 The Superintendent Prohibition & Excise
Khamman, Khamman District.
2 The Principal Secretary, Prohibition & Excise Department
Government of Andhra Pradesh, Secretariat, Hyderabad.
3 The Commissioner of Prohibiotion & Excise Government of Andhra Pradesh , Hyderabad.
4 The District Collector, Khammam ,
Khammam district.

5 2 CCs to the G.P. for Prohibition and Excise, High Court

Buildings, Hyderabad. (OUT)

6 2 CD copies.